

CHRONO

OLL FILE

Legislation

Recpt #

Chrono

OLL 85-3415
6 November 1985

MEMORANDUM FOR: DDA; C/PPG/OS; DC/ALD/OGC; C/SECOM;
C/LEG LIA/IC Staff

STAT FROM:

Legislation Division
Office of Legislative Liaison

SUBJECT: S. 1815

1. Attached please find a copy of S. 1815, the "Polygraph Protection Act of 1985", together with introductory remarks. This bill was introduced by Senators Hatch and Kennedy on October 28, 1985 and referred to the Senate Labor and Human Resources Committee of which Senator Hatch is Chairman. As you know, Senator Hatch is also a member of the Senate Select Committee on Intelligence (SSCI). Also attached please find a copy of a draft views letter on the bill from the Director to Chairman Hatch. We would appreciate receiving your comments on this views letter by Friday, 8 November 1985.

2. S. 1815 would ban the private use of polygraph examinations in employment situations. As such, it is similar to House legislation on the subject, H.R. 1924. We are currently attempting to work with the proponents of H.R. 1924 to clarify the exemption in that bill for polygraph examinations given to employees of Agency contractors as part of the Agency's industrial security program.

3. S. 1815 is directed at entities "engaging in interstate commerce". The phrase "engage in interstate commerce" is, of course, a term of art, and it is something in which, by definition, neither the federal government nor the Agency engage. Further, Section 8 of the bill specifically provides that the bill does not apply to "employees of the United States". As such, S. 1815 would not apply to the use of polygraph examinations by the Agency itself. There is, however, a question as to whether or not the bill would apply to examinations administered to the personnel of Agency contractors.

4. Section 8 of the bill contains an exemption for the "personnel of contractors of the Department of Defense with access to classification information". Section 8 further

provides that polygraph examinations may be administered to such persons as authorized in the Department of Defense Authorization Act for Fiscal Year 1986. There is, however, no clear exemption in the bill for polygraph examinations administered to personnel of Agency contractors. As such, the bill is of concern to the Agency because of its potential adverse impact on the industrial security program.

5. This concern would be alleviated were the bill to be amended to include a specific exemption for Agency contractors and their employees. It is possible that Senator Hatch, because of his membership on the SSCI, would be favorably disposed to such an amendment. Further, because of this and because it is relatively early on in the Senate consideration of this bill, it may be possible to seek an exemption for the contractors (and their employees) of all agencies within the Intelligence Community as opposed to just those of the Agency. To this end, we have prepared the attached views letter and would appreciate your comments thereon, especially your comments on the proposed exemption for the Community.

6. We are currently reviewing the entire matter in conjunction with Senator Hatch's staff, the staff of the SSCI and other agencies within the Community to determine the best approach to take. We will keep you advised of our discussions and their results.

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Attachment:
as stated

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